LEO CROWLEY
MICHAEL G. CLIFTON

IBLA 84-389 Decided November 26, 1984

Appeal from the February 16, 1984, decision of the Arizona State Office, Bureau of Land Management (BLM), declaring certain lode mining claims null and void. A MC 214244 through A MC 214265; A MC 214270 and A MC 214271.

Affirmed in part and reversed in part in accord with Moise and Leon Berger, 82 IBLA 253 (1984).

1. Mining Claims: Lands Subject to -- Patents of Public Lands: Reservations -- Railroad Grant Lands

   Where lands were patented to a railroad under a statute which authorized the granting of nonmineral lands only, the issuance of the patent generally constituted a conclusive determination by the United States of the nonmineral character of the land so patented, and the subsequent discovery of mineral values thereon does not operate to void the conveyance by the United States. Where such land has been reconveyed to the United States subject to a reservation of all minerals to the private grantor, the land is not subject to the subsequent location of mining claims under the general mining laws.

2. Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Lode Claims

   Lode mining claims located entirely on lands which are not subject to mineral entry at the time of their location are properly declared null and void ab initio without a hearing. However, where lode claims are partially located on land which is then not subject to mineral entry, they may not summarily be declared null and void ab initio to the extent of those portions of the claims which embrace lands not available to mineral entry, as lode claims may be projected onto such lands in order to configure the claim boundaries so as to secure extralateral rights.

APPEARANCES: Leo Crowley, Esq., Flagstaff, Arizona, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This case is identical in all aspects to the appeal decided August 28, 1984, as Moise and Leon Berger, 82 IBLA 253 (1984); and but for inadvertence, this case would have been consolidated with that one and resolved by the Berger decision. The claims are part of the same group as those considered in Berger, the same arguments are presented, and Leo Crowley, appellant in this case, appears as counsel of record in both this case and Berger.

The basic contention is that because only nonmineral lands could be conveyed as railroad grant lands pursuant to the Act of July 27, 1886 (14 Stat. 292), the conveyance of the subject lands to the Santa Fe Pacific Railroad was void, as these are mineral lands. Subsequently, when the railroad conveyed the surface estate, it reserved the mineral estate, which appellants assert it had no right to do.

[1] We hold, as we did in Berger, that although only lands classified as nonmineral were authorized to be conveyed to the railroad, there was no reservation to the United States of the mineral estate in such lands. Moreover, as we noted in Berger at page 255:

> Appellants' contention that the grant to railroad is a nullity because mineral lands were to be excluded from such grants has been considered and rejected many times by the courts and this Department. The rule is that, absent fraud, the issuance of the patent to the railroad operates as a conclusive determination by the United States of the nonmineral character of the land so patented, and the subsequent discovery or identification of mineral values thereon does not operate to void the conveyance or create a reservation of the minerals to the United States. See Burke v. Southern Pacific R.R., 234 U.S. 669 (1914); Barden v. Northern Pacific Railroad, 154 U.S. 288 (1894); Joseph A. Barnes, 78 IBLA 46 (1983) (appeal pending); Diane B. Katz, 48 IBLA 118 (1980); Northern Pacific Railway, 32 L.D. 342 (1903); See also Diamond Coal and Coke Co. v. United States 233 U.S. 236 (1914); George Antunovich, 76 IBLA 301, 90 I.D. 464 (1983).

[2] Nevertheless, in Berger we noted that certain lode claims were declared by BLM to be null and void ab initio to the extent that portions of them are located or projected on patented land. We reversed that holding, saying at page 255:

> [I]t has long been held that where a lode location is based upon a discovery of a mineral deposit on land which is open to mineral entry, the mining claimant may extend or project the claim boundaries onto adjacent patented, withdrawn or acquired land in order configure the claim boundaries so as to obtain, in appropriate circumstances, the extralateral rights to the deposit. Therefore, this Board has held in a number of recent opinions that BLM should not declare null and void those portions of lode claims which extend or are projected onto lands not subject to mineral entry without a factual determination that the apex of the lode

> purportedly discovered is not situated within the available portion of the claim. Such a determination may only be made within the context of a contest proceeding conducted in accordance with the rules governing due process. Marvin F. Johnston, 81 IBLA 295 (1984); Marilyn Dutton Hansen, 79 IBLA 214 (1984); Santa Fe Mining, Inc., 79 IBLA 48 (1984); Zula C. Brinkerhoff, 75 IBLA 179 (1983); and cases cited therein.

In the instant case, BLM declared the Gold Standard #16, #17, #46 and #47 claims null and void ab initio in part for the same reason. In conformity with the Berger decision, we reverse that holding.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge.